

REMARKS

Claim 1 has been amended to overcome an informality. Support for amended claim 1 can be found in the specification as originally filed, (see page 13, lines 17-18 and page 14, Table 1).

The claimed subject matter of claims 4, 8, 14, and 16 have been incorporated into independent claims 1, 12, and 20.

No new matter has been added to the application by the amendments.

The Rejection Under 35 U.S.C. 112

Claims 1-4 and 7-11

The Examiner has rejected claims 1-4 and 7-11 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants respectfully traverse this ground for amendment insofar as it applies to the present amended claimed invention.

The Examiner asserts that claim 1 is vague and indefinite. Specifically, the Examiner remarks that while line 1 recites a dough or batter composition; line 3 however, recites only the dough composition when baked.

In response to this ground for rejection, claim 1 has been amended to recite that
“the dough or batter composition when baked to a thickness of about 2.2 mm,
having a modulus of at least 200 g/ mm² at a moisture content of 10%.”

Support for amended claim 1 can be found in the specification as originally filed, e.g., at page 13, lines 17-18 and page 14, Table 1.

In view of the instant amendment to claim 1, applicants respectfully submit that this ground for rejection to presently pending dependent claims 2-3, 7, and 9-11 has been obviated.

Claims 4 and 8 have been cancelled.

Applicants respectfully submit that the presently claimed invention complies with the requirements of 35 U.S.C. § 112.

The Rejection Under 35 U.S.C. 102

The Examiner has rejected claims 1-3, 9, 10, 11-13 under 35 U.S.C. 102(e) as being anticipated by the '437 patent to Katta et al. Applicants respectfully submit that the pending claims are not anticipated by the '437 patent to Katta et al. in view of the accompanying Declaration under 37 CFR 1.131.

As stated by Diane Rosenwald in the accompanying Declaration, the applicants conceived and reduced to practice the invention as disclosed and claimed in the aforementioned United States Patent Application Serial No. 09/694,927 prior to the filing date of May 18, 1999 of the Katta et al patent. Therefore, the claimed invention is not anticipated by Katta et al. Applicants respectfully request withdrawal of the anticipation rejection based on Katta et al., as the rejection is no longer applicable to claims 1-3, 9, 10, and 11-13.

The Rejection Under 35 U.S.C. 103

The Examiner has rejected claims 4, 7-8, 14, 16-19 and 20-27 under 35 U.S.C. 103(a) as being unpatentable over Katta et al in view of the '323 patent to Savage and the '920 patent to Taylor et al.

Claims 4, 8, 14, and 16 have been cancelled. The claimed subject matter of claims 4, 8, 14, and 16 have been incorporated into independent claims 1, 12, and 20.

Applicants contend that Katta et al. is not anticipated by the present invention, as stated previously and supported by Diane Rosenwald in the accompanying Declaration, the applicants conceived and reduced to practice the invention as disclosed and claimed in the present application prior to the filing date of May 18, 1999 of the Katta et al. patent. As such, applicants assert that Katta et al. is not available as a reference that can be used to reject claims 4, 7-8, 14, 16-19 and 20-27 under 35 U.S. C. 103(a).

The presently claimed invention recites a dough or batter composition, a baked good made from the composition, or a filled food product made from the composition, the composition comprising flour, water and a sweetener, the sweetener importantly comprising at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, and the composition, when baked to a thickness of about 2.2 mm, has a modulus of at least 200 g/mm^2 at a moisture content of 10%. The invention provides a finished baked product that stays crispy when exposed to high levels of moisture, such as a component in a frozen ice cream novelty product.

Applicants respectfully argue that Katta et al in view of Savage and further in view of Taylor et al, alone or in combination, fail to teach or suggest or provide any motivation or an expectation of success that one skilled in the art would make the invention as claimed.

In support, applicants first note that the Examiner states, and applicants agree, that Katta et al does not disclose forming the cookie in the shapes claimed, putting a filling in a cookie, the crystalline hydrate former as claimed and corn syrup having a DE as claimed.

The Savage reference teaches a typical, conventional cookie recipe that utilizes an ingredient "corn syrup solids." Applicants assert that there is no suggestion in Savage, nor would the disclosure of Savage, lead one to, the claimed invention. The present invention is directed to a composition that provides a baked good that remains crispy under high moisture levels; this crispiness is quantified as modulus. Savage merely molds cookie dough in order to provide a concave bowl. Savage does not disclose using either a crystalline hydrate former or a high molecular weight starch hydrolysate having a DE of 1 to 20, nor is there any disclosure in Savage that would lead one to these materials in order to produce crispy products. There is no suggestion that products with a DE of 1 to 20 would provide the desired modulus. Savage also does not disclose a composition as claimed, the composition having the ingredients recited in the pending claims.

Furthermore, there is no suggestion that Katta et al in view of Savage that would lead one to the claimed invention.

The Taylor reference teaches the use of a vegetable fat or shortening having a specific solid fat content to increase the bloom resistance of cookies containing cocoa powder and/or chocolate liquor.

Taylor discloses a cookie recipe that can include sucrose, fructose, lactose, dextrose, galactose, maltodextrin, corn syrup solids and hydrogenated starch hydrolysate. The Examiner contends that the different sugars of the disclosed cookie recipe could be any DE and that it would have been obvious to one skilled in the art to select one having a low DE or vice versa.

The Examiner also contends that the selection of the DE value would be an obvious matter of choice depending on the degree of sweetness desired. If sweetness were the basis for selection of the DE value, then the skilled artisan would be led to select higher DE corn syrup ingredients, since these are more sweet on an equivalent usage basis and thus would be led directly away from using the selected low DE, high molecular weight materials that applicants have selected. Applicants cannot agree that selecting a low DE value, specifically 1 to 20 DE, is obvious. As presented to the Examiner previously in an earlier response to the Savage reference, applicants have found that the DE level affects other properties than merely the sweetness of the product. In particular, the higher value DE materials lead to more undesirable properties. For example, as the DE value increases, the amount of browning during cooking or baking decreases. See, for example, page 13, lines 22-24 of the specification. Also, as the DE value increases, more of the ingredient is needed in order to get the desired crispiness. See, for example, page 10, lines 23-27. And as shown in Figure 6 and described at page 10, line 27 through page 11, line 2, as the overall DE value increases, the crispiness of the baked good (i.e., the modulus) decreases as the moisture content increases. These reasons, among others, would not lead one to select a starch hydrolysate having a high DE value merely because a sweeter product is desired.

Katta et al. is not properly combinable with Savage and Taylor et al. Furthermore, even if Katta were combined with Savage and Taylor et al., the combination fails to make the present invention obvious.

Specifically, regarding product claim 1 and all claims dependent therefrom, the teachings of Katta et al. in view of Savage and Taylor et al. do not make obvious a dough or batter composition wherein the sweetener ingredient comprises at least 40% of at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose.

Specifically, regarding product claim 12 and all claims dependent from claim 12, the teachings of Katta et al. in view of Savage and Taylor et al. do not make obvious a baked product including a sweetener ingredient, wherein the sweetener comprises at least 40% of at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former selected from the group consisting of maltose, trehalose, isomalt, and raffinose; the baked good, when having a thickness of about 2.2 mm, having a modulus of at least 200 g/mm² at a moisture content of 10%.

Specifically, regarding product claim 20 and all claims dependent upon claim 20, the teachings of Katta et al. in view of Savage and Taylor et al. do not make obvious a filled baked good, wherein the baked good sweetener ingredient comprises at least 40% of at least one of a high molecular weight starch hydrolysate having a DE of 1- to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose.

In view of the deficiencies of the combined references to teach, suggest or motivate the present invention, applicants respectfully contend that the pending claims are unobvious over Katta et al, in view of Savage and Taylor et al., within the meaning of 35 U.S.C. §103 and withdrawal of this rejection is requested.

SUMMARY

Applicants have made an earnest effort to place their claims in proper form and to distinguish their claimed invention from the prior art.

WHEREFORE, withdrawal of the rejection under 35 U.S.C. §112 (2nd paragraph); §102(e); and §103(a); allowance of claims 1-3, 7, 9-13, and 17-27; and passage of the application to issue are respectfully requested.

Attached is a marked-up version of the amendments made to the claims by the current amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE".

The Examiner is invited to contact the undersigned representative if it will facilitate prosecution of this application.

Please address all future communications to the undersigned attorney.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

1. (Amended) A dough or batter composition[,] comprising[:] flour, water and a sweetener, wherein the sweetener comprises at least 40% of [the sweetener comprising] at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose;[,] the dough or batter composition, when baked to a thickness of about 2.2 mm, having a modulus of at least 200 g/mm² at a moisture content of 10%.

4. (Cancelled)

8. (Cancelled)

12. (Amended) A baked good made from a dough or batter composition[,] comprising[:] flour, water and a sweetener, wherein the sweetener comprises at least 40% of [the sweetener comprising] at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose; the baked good, when having a thickness of about 2.2 mm, having a modulus of at least 200 g/mm² at a moisture content of 10%.

14. (Cancelled)

16. (Cancelled)

20. (Amended) A filled food product[,] comprising:

a baked good composition comprising flour, water and a sweetener, wherein the sweetener comprises at least 40% of [the sweetener comprising] at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose; and[,]

a filling in contact with the baked good.

VERSION WITH CLEAN CLAIMS

1. (Amended) A dough or batter composition, comprising: flour, water and a sweetener, wherein the sweetener comprises at least 40% of at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose; the dough composition, when baked to a thickness of about 2.2 mm, having a modulus of at least 200 g/mm^2 at a moisture content of 10%.
2. (Amended) The composition according to claim 1, when baked to a thickness of about 2.2 mm, having a modulus of at least 300 g/mm^2 at a moisture content of 10%.
3. (Amended) The composition according to claim 1, wherein the sweetener comprises at least one of the high molecular weight starch hydrolysate and the crystalline hydrate former, and sucrose.
4. (Cancelled)
- 7.(Amended) The composition according to claim 1, wherein the high molecular weight starch hydrolysate is corn syrup solids having a DE of 1 to 20.
- 8.(Cancelled)
- 9.(Amended) The composition according to claim 2, when baked to a thickness of about 2.2 mm, having a modulus of at least 350 g/mm^2 at a moisture content of 10%.
- 10.(Amended) The composition according to claim 1, when baked to a thickness of about 2.2 mm, having a modulus of at least 200 g/mm^2 at a moisture content of 9%.

11.(Amended) The composition according to claim 10, when baked to a thickness of about 2.2 mm, having a modulus of at least 300 g/mm^2 at a moisture content of 9%.

12.(Amended) A baked good made from a dough or batter composition[,] comprising[:] flour, water and a sweetener, wherein the sweetener comprises at least 40% of at least one of a high molecular weight starch hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose; the baked good, when having a thickness of about 2.2 mm, having a modulus of at least 200 g/mm^2 at moisture content of 10%.

13. The baked good according to claim 12, when having a thickness of about 3 mm, having a modulus of at least 300 g/mm^2 at a moisture content of 10%.

14. (Cancelled)

16. (Cancelled)

17. The baked good according to claim 12, wherein the baked good is a receptacle for a frozen dessert selected from the group consisting of ice cream, ice milk, gelato, frozen yogurt, sorbet, frozen custard and sherbet.

18. The baked good according to claim 17, wherein the baked good is a cone.

19. The baked good according to claim 17, wherein the baked good is a wafer, a cup, or a rolled cone.

20. (Amended) A filled food product[,] comprising:

a baked good composition comprising flour, water and a sweetener, wherein the sweetener comprises at least 40% of at least one of a high molecular weight starch

hydrolysate having a DE of 1 to 20 or a crystalline hydrate former, wherein the crystalline hydrate former is selected from the group consisting of maltose, trehalose, isomalt, and raffinose; and[,]

a filling in contact with the baked good.

21. The filled food product according to claim 20, wherein the baked good has a thickness of about 2.2 mm and a modulus of at least 350 g/mm² at a moisture content of 10%.

22. The filled food product according to claim 20, wherein the filling is a savory filling.

23. The filled food product according to claim 20, wherein the filling is a sweet filling.

24. The filled food product according to claim 20, wherein the baked good is mixed throughout the filling.

25. The filled food product according to claim 20, wherein the filling is selected from the group consisting of ice cream, ice milk, gelato, frozen yogurt, sorbet, frozen custard, and sherbet.

26. The filled food product according to claim 25, wherein the baked good is a cone.

27. The filled food product according to claim 25, wherein the baked good is a wafer, a cup, or a rolled cone.